

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ANTHONY HOGAN,  
RESPONDENT  
vs.**

**BOARD OF POLICE COMMISSIONERS OF KANSAS CITY, MISSOURI, et al.,  
APPELLANT**

**POLICE RETIREMENT BOARD OF KANSAS CITY,  
APPELLANT**

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DOCKET NUMBER WD71687 (Consolidated with WD71705)

DATE: MARCH 8, 2011

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Appeal from:

Jackson County Circuit Court  
The Honorable Joel F. May, Judge

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Appellate Judges:

Division One: James M. Smart, Jr., P.J., Joseph M. Ellis and Cynthia L. Martin, JJ.

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Attorneys:

Rik N. Siro, for Respondent

Lisa S. Morris, for Appellant Board of Police Commissioners of Kansas City, Missouri

Richard F. Adams, for Appellant Police Retirement System of Kansas City

Douglas Ghertner, Co-counsel for Appellant Police Retirement System of Kansas City

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ANTHONY HOGAN, RESPONDENT**

**v.**

**BOARD OF POLICE COMMISSIONERS OF KANSAS CITY, MISSOURI, et al.,  
APPELLANT**

**POLICE RETIREMENT SYSTEM OF KANSAS CITY, APPELLANT**

WD71687 (Consolidated with WD71705)

Jackson County, Missouri

Before Division One Judges: James M. Smart, Jr., P.J., Joseph M. Ellis and Cynthia L. Martin, JJ.

The Board of Police Commissioners (Police Board) and the Police Retirement System of Kansas City (Retirement Board) appeal from the trial court's judgment awarding Anthony Hogan \$139,520 in lost past retirement benefits.

**REVERSED IN PART and MODIFIED.**

**Division One holds:**

- (1) The language of §§ 86.450.1 and 86.457.1 reflect that the Police Board has discretion in determining whether to retire an officer as duty or non-duty related. Retirement decisions are shared responsibility between the Retirement Board and the Police Board. Accordingly, the trial court did not err in finding that the Police Board acted unreasonably, arbitrarily, and capriciously when it determined that Hogan's disability was non-duty related.
- (2) The trial court did not commit plain error in failing to apply the "origin of claim doctrine" to Hogan's lost past retirement benefits or to Hogan's return of capital for previously paid taxes.
- (3) Perceiving no evident, obvious, and clear error in the trial court's inclusion in the award of taxes Hogan would have to pay for six months of benefits in 2009, this Court declines the Retirement Board's request for plain error review.
- (4) The Retirement Board failed to preserve its claim that the allocation of damages was improper, and this Court declines to review that claim for plain error.
- (5) The trial court erred in determining that the Police Board was jointly liable with the Retirement Board for the portion of the judgment that represented the difference between the non-duty related pension benefits paid and the

duty related pensions benefits Hogan was entitled to because the Retirement Board was the only entity that benefited from the underpayment.

Opinion by Joseph M. Ellis, Judge

Date: MARCH 8, 2011

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